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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.02.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.11 of 1995

and C.M.P.No.264 of 1995
and C.M.P.Nos.8476 & 8477 of 2006

1. Ramasamy
2. Selvaraj

... Appellants

Vs.

1. Kamalammal(died)
2. Jayaraj
3. Dhanaraj
4. Kanagaraj

Respondents 2 to 4 are brought on record as legal representatives of the deceased sole respondent vide order dated 31.8.2006 in CMP.8475 to 8477/06.

... Respondents

PRAYER: Second Appeal filed under section 100 CPC against the Judgment and decree dated 31.10.1994 made in A.S.No.39 of 1994 on the file of the District Judge, Villupuram Ramasamy Padayachi District reversing the judgement and decree dated 08.09.1992 in O.S.No.638 of 1991 on the file of the Principal District Munsif, Villupuram.

For Petitioners : Mr.R.Yashod Vardhan

For Respondents : Mr.R.Balakrishnan

J U D G M E N T

The defendants in the Trial Court are the appellants. The first respondent has filed the suit on the promissory note stated to have been executed by the defendants on 05.01.1989 for an amount of Rs.10,000/- agreeing to repay the said amount along

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with 12% interest. The defendants have denied the receipt of the said amount. However, it was the specific case of the defendants that they have received Rs.8000/- from the plaintiff in 1981 but the plaintiff has obtained a promissory note from the defendants for Rs.10000/- on 09.11.1981. It was at that time, according to the defendants, the plaintiff has obtained signatures of the defendants in a blank stamp paper. The defendants have returned the amount received by the plaintiff in 1981 and thereafter, there was no transaction between the defendants and the plaintiffs and at the insistence of the brother of the first defendant one Marimuthu, the suit promissory note was created in the blank paper. The promissory note was marked as Ex.A.1 dated 05.01.1989, the first defendant Ramasamy was examined as D.W.1 and the second defendant Selvaraj was examined as D.W.2.

2. According to the first defendant, he was in the habit of singing as A.இராமசாமி and according to the second defendant as D.W.2, he used to sing as V.Selvaraj in English. However, the promissory note Ex.A.1 contains the signature of the first defendant as ராமசாமி and the second defendant's signature found in Tamil. The second defendant has also produced various documents like Ex.B.13 and B.16 to show that he is in the habit of singing his name in English.

3. The Trial Court after appreciation of evidence has dismissed the suit. It was on the appeal filed by the plaintiff, the appellate Court has granted a decree on the promissory note and it was as against the reversing judgement of the first appellate Court, the defendants have filed the second appeal. While admitting the second appeal, the following question of law was framed -

> "Whether the first appellate court was right and justified in law in reversing the decree passed by the Trial Court without disloding the reason given by the Trial Court and acting on the oral testimony of the plaintiff alone in regard to the execution and proof of promissory note."

4. The contentions of the learned counsel appearing for the appellants is that when the plaintiffs have filed the suit for promissory note under Ex.A.1 and the defendants has come out specifically denying the signature, on the above said averments, it was the duty of the plaintiff to prove the genuiness of the signature in the promissory note at least by examining the witnesses, who have singed in the promissory note. In such circumstances, according to the learned counsel for the appellant it should be taken that the plaintiff, who has filed

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the suit has not taken any steps to prove his case. He would also submit that the Trial Court has taken the same into consideration and found that the plaintiff has not proved the execution of the promissory note by the defendants and it was on that basis the suit was dismissed.

5. On the other hand, the learned counsel for the respondents would submit that when admittedly, the defendants have executed a promissory note in the year 1981, namely, 09.11.1981 and the defendants have taken a stand that said promissory note does contain the signature of the defendants, they ought to have produced the said promissory note dated 09.11.1981, which is admitted and stated to have been discharged and the defendants got back the said promissory note and the very conduct of the defendants in not producing the said promissory note shows the present allegation of defendants' in denying the signature in Ex.A.1 as false. It is also the contention of the learned counsel for the respondent that when the defendants have come forward specifically with a positive plea that they have not signed the suit promissory note Ex.A.1, they ought to have taken steps to refer the signatures of Ex.A.1 to hand writing experts. He would also submit that the learned Trial Judge having held that there is no necessity for referring the matter for hand writing experts and the court itself can see the signatures, has not even given a finding by comparing the admitted signature of the defendants with that of Ex.A.1.

6. I have heard the learned counsel for the appellant as also the defendants.

7. As it is found by the learned first appellate judge, the first defendant, who has come forward with a specific plea that he is in the habit of signing in Tamil as "A.இராமசாமி" has in fact signed his name in the postal acknowledgment for having received the legal notice from the counsel for the plaintiff marked as Ex.A.3 in English as "A.ராமசாமி". The signature of first defendant in Ex.A.3 is admitted. In fact the first appellate court on referring to Ex.B1 to B8 found that in all those documents the signatures are not clear except the word "இரா". It is specific finding by the first appellate court based on the cross examination of the plaintiff as P.W.1 on behalf of the defendants it was the case of the defendants that the plaintiff has obtained signature of the defendants in blank papers and it was out of that Ex.A.1 was prepared. It was on the basis of the said cross examination on behalf of the defendants, the appellate court has come to a conclusion that the defendants have admitted the signatures in Ex.A.1 and therefore, what remains is that the contents are not vouched to

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the defendants but only the signature. It is everybody's knowledge that when once the defendants admit the signature in such a candid manner, however, stating that the signatures of the defendants were obtained in the blank papers and therefore, the contents of the Ex.A.1 is not vouched to the defendants, the onus of proving against the contents is on part of the defendants as per the rules prescribed under the Negotiable Instruments Act. The defendants certainly have not taken any steps for the purpose of disproving the contents of the Ex.A.1 promissory note in a tangible manner either by referring for the handwriting experts by any other method.

8. Further, when it is admitted that the defendants have executed a promissory note in favour of the plaintiff on 09.11.1981 and that amount has been discharged and the promissory note has been returned back to them, nothing prevented the defendants from producing the said promissory note with their admitted signature, in order to disprove the claim of the plaintiff made under Ex.A.1, having not done the same and especially in the circumstances that the defendants have tacitly admitted the signature contains in Ex.A.1 as that of theirs, the defendants have to necessarily.

9. I do not think that the judgement of the first appellate court suffers from any illegality. In fact the appellate Court has found that the signatures relied upon by the defendants under the Ex.A.1 to A.4 are all relating to the periods much before that of the signatures under the suit promissory note dated 05.01.1989 under Ex.A.1. On the appreciation of evidence on both the side, the appellate Court has correctly come to a conclusion that the allegation raised by the defendants that the suit itself has been filed at the instance of one Marimuthu cannot be accepted for the simple reason that even under Ex.A.5 reply notice, there was no such reflection of the said allegations.

10. In view of the above said facts and circumstances, especially in the circumstance that there is an acceptance of the signature by the defendants under Ex.A.1 and in spite of it, the defendants have not taken any steps to disprove the contents of Ex.A.1, and taking into consideration that in such circumstances there is always a presumption in favour of the promissory note under Ex.A.1, there is absolutely no difficulty to come to the conclusion that decision of the learned first appellate judge is perfectly in order and does not require any interference.

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11. In view of the same, the second appeal fails and the same is dismissed with cost. Consequently, the connected C.M.Ps.are closed.

nbj

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Asst.Registrar

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Sub Asst.Registrar

To

1. The District Judge,
Villupuram.

2. The Prl District Minsif,
Villupuram.

3. The Section Officer,
VR Section, High Court,
Madras.

+ 1 cc to Mr. R. Balakrishnan, Advocate SR No. 11550

MJ(CO)
SR/21.3.2007

Order in
S.A.No.11 of 1995

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